

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:17-CV-1113

NORTH CAROLINA DEMOCRATIC
PARTY; CUMBERLAND COUNTY
DEMOCRATIC PARTY; DURHAM
COUNTY DEMOCRATIC PARTY;
FORSYTH COUNTY DEMOCRATIC
PARTY; GUILFORD COUNTY
DEMOCRATIC PARTY; MECKLENBURG
COUNTY DEMOCRATIC PARTY;
ORANGE COUNTY DEMOCRATIC
PARTY; and WAKE COUNTY
DEMOCRATIC PARTY,

Plaintiffs

v.

PHILLIP E. BERGER, in his official capacity
as PRESIDENT PRO TEMPORE OF THE
NORTH CAROLINA SENATE; TIMOTHY
K. MOORE, in his official capacity as
SPEAKER OF THE NORTH CAROLINA
HOUSE OF REPRESENTATIVES; THE
STATE OF NORTH CAROLINA; THE
NORTH CAROLINA BIPARTISAN STATE
BOARD OF ELECTIONS AND ETHICS
ENFORCEMENT; and KIMBERLY
STRACH, in her official capacity as
EXECUTIVE DIRECTOR OF THE NORTH
CAROLINA BIPARTISAN STATE BOARD
OF ELECTIONS AND ETHICS
ENFORCEMENT,

Defendants

DEFENDANTS' JOINT MOTION
TO EXTEND TIME TO RESPOND
TO PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

NOW COME Defendants, by and through their respective undersigned counsel, and
hereby move to extend the time in which they must respond to the Motion for Preliminary

Injunction, [D.E. 14], up to and including January 16, 2018. In support of this motion, Defendants show the following:

1. On December 12, 2017, Plaintiffs filed a complaint challenging Section 4(a) of North Carolina Session Law 2017-214 (“S.L. 214”) as violating their First and Fourteenth Amendment rights of political association.
2. S.L. 214 was enacted on October 17, 2017.
3. Along with their Complaint, Plaintiffs also filed on December 12, 2017 a Motion for Preliminary Injunction and a Memorandum in Support along with seven Affidavits, some with their own exhibits. Plaintiffs neither filed a motion for temporary restraining order nor have yet to request expedited briefing and review of their Motion, though counsel for Plaintiffs indicated that they intend to file a motion to expedite next week.
4. In a conference about these scheduling issues, counsel for Plaintiffs argued that a response to the Motion is currently due January 2, 2018.
5. Plaintiffs sent waivers of service on December 14, 2017 to all Defendants, care of the Attorney General’s Office.¹
6. Defendants State Board of Elections and Ethics Enforcement and Director Kimberly Strach waived service of process as of December 14, 2017, with that waiver being filed on December 19, 2017. Defendant State of North Carolina waived service of process as of December 21, 2017, with that

¹ It is not clear that a summons has been issued against Defendant Phillip Berger, in his official capacity as President Pro Tempore of the North Carolina Senate.

waiver have not yet been filed. Accordingly, these Defendants, and any other Defendant who agrees to waive service, would have up until February 12, 2017 to respond to the Complaint.

7. Defendants Phillip E. Berger, and Timothy K. Moore have not been served with process and have not yet waived service.
8. By Plaintiffs' calculation of a January 2 response to the Motion for Preliminary Injunction and due to the intervening federal and state holiday schedule, Defendants face a significantly shortened period of time between the Motion's filing date and the calculated deadline to respond to the Motion.
9. Due to the upcoming holidays, other calendar commitments and pre-existing unavailability, additional time is needed for counsel to meet with their respective clients to discuss this matter, to obtain affidavits, if necessary, and to prepare a response.
10. Special Session of the General Assembly is also scheduled to be held in January 2018. It is anticipated that this session may impact the challenged statute.
11. Although the challenged statute was enacted in October, 2017, Plaintiffs waited until December 12, 2017, to file their lawsuit. Given this timing, this matter does not appear to be urgent, and any urgency now claimed by Plaintiffs was of their own making, to Defendants' prejudice.
12. Further, it is unclear if the interaction of Rule 4's waiver of service, which allows at least thirty days to decide to waive and extends the time to respond

to a complaint up to sixty days, would permit a plaintiff to insist on a twenty-one day response to a motion, pursuant to Local Rule 7.3, that was served informally with the request for waiver.

13. Defendants have not sought any previous extensions of time in this matter.
14. The relief requested herein is for good cause and will not result in undue delay in the administration of this case or 2018 elections.
15. Undersigned counsel conferred with counsel for Plaintiffs via telephone and email on December 21, 2017. Defendants requested an agreement from Plaintiffs that all Defendants, presently served or not, would respond by January 16 and agree to an expedited review of the Motion beyond that. Plaintiffs did not agree and offered only one (1) extra day. Defendants then requested a compromise due date of January 12, 2018. Plaintiffs countered with an extension of three (3) days only to January 5. For the reasons explained above, a three (3) day extension of time is not sufficient to allow Defendants an opportunity to prepare a meaningful and fully-researched response to the Motion.
16. Defendants are willing to agree to an expedited briefing schedule if the deadline to respond to the Motion for Preliminary Injunction is extended.

Wherefore, Defendants respectfully pray that the time within which they must respond to the Motion for Preliminary Injunction be set at January 16, 2018.

This the 22nd day of December, 2017.

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capacity as President Pro Tempore of
the North Carolina Senate and
TIMOTHY K. MOORE, in his official
capacity as Speaker of the North
Carolina House of Representatives*

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing Motion and Proposed Order attached hereto with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel and parties of record.

This the 22nd day of December, 2017.

/s/ Olga Vysotskaya de Brito
Olga E. Vysotskaya de Brito
Special Deputy Attorney General